

UNITED STATES DISTRICT COURT

DISTRICT OF NEBRASKA

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UNITED STATES OF AMERICA,	)	
	)	Case No. 4:19CR3095
Plaintiff,	)	
	)	
vs.	)	Omaha, Nebraska
	)	April 21, 2020
AARON LEE FISCHER,	)	
	)	
Defendant.	)	
	)	

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BEFORE: THE HONORABLE CHERYL R. ZWART, MAGISTRATE JUDGE

TRANSCRIPT OF PROCEEDINGS

CHANGE OF PLEA HEARING

APPEARANCES:

For the Plaintiff:

U.S. Attorney's Office - Lincoln  
By: Steven A. Russell, Esq.  
100 Centennial Mall North, Suite 487  
Lincoln, Nebraska 68508

For the Defendant:

Federal Public Defender's Office - Lincoln  
By: Jessica L. Milburn, Esq.  
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Proceedings Recorded by Electronic Sound Recording  
Transcript Produced by Transcriptionist

1 (Proceedings began at 2:27 p.m.)

2 THE COURT: We're on the record in case number  
3 4:19CR3095, the United States of America versus Aaron Fischer.  
4 Counsel, please enter your appearance.

5 MR. RUSSELL: Your Honor, please enter the appearance  
6 of Steven Russell on behalf of the United States.

7 MS. MILBURN: And Jessica Milburn, appearing with Mr.  
8 Fischer.

9 THE COURT: Mr. Fischer, you're here today because I've  
10 been told that you want to enter a plea of guilty. Is that  
11 true?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: I need to explain to you that I am not your  
14 sentencing judge. I'm not the judge who's going to determine  
15 whether your guilty plea is accepted and whether your plea  
16 agreement is accepted. Those matters would be taken up by Judge  
17 Gerrard, who is your sentencing judge. But what I can do for  
18 you today is gather some information from you and make a  
19 recommendation up to Judge Gerrard on those issues.

20 Do you agree to proceed before me?

21 THE DEFENDANT: Yes, ma'am.

22 (The oath was administered to the Defendant.)

23 THE COURT: You're now under oath, sir. You've sworn  
24 to tell the truth, which means if you lie during this  
25 proceeding, you can be separately prosecuted for the crime of

1 perjury.

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now, I want to also cover one more thing.  
5 Typically, these hearings would be done in person. That is,  
6 obviously, the preferable way to do that. Under the  
7 circumstances, we're dealing with the Covid-19 pandemic, and all  
8 court hearings have been delayed -- all in-person court hearings  
9 have been delayed until that no longer poses a substantial risk  
10 of harm to the public.

11 But the parties requested, through your counsel and the  
12 Government's counsel, that this matter be taken up by video  
13 conference.

14 Do you agree to doing it by video today?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. I have -- at this time, I'm  
17 going to have the Government explain to you, again, the charge  
18 to which you intend to plead guilty and the possible penalty for  
19 that charge.

20 Mr. Russell.

21 MR. RUSSELL: Mr. Fischer, you're charged in Count I of  
22 the indictment with a violation of Title 18, United States Code,  
23 Section 2251(a), which is production of child pornography.

24 If you're found guilty of that crime, the maximum  
25 penalty is up to 30 years in prison, with a mandatory minimum of

1 15 years in prison; a maximum fine of up to \$250,000; both such  
2 maximum fine and term of imprisonment; a special assessment of  
3 up to \$50,000; and a term of supervised release of up to life,  
4 with up to at least five years of supervised release.

5 Sir, do you understand the nature of the crime charged  
6 and the maximum possible penalties?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Having heard the crime charged again and  
9 the possible penalties, is it still your intent to plead guilty?

10 THE DEFENDANT: Yes, Your Honor, it is.

11 THE COURT: I have, in front of me, a petition to enter  
12 a plea of guilty and a plea agreement. Do you have those  
13 documents in front of you?

14 THE DEFENDANT: I do not, no.

15 THE COURT: Okay. Then I will just ask you: Did you  
16 go over these documents with your attorney on April 17th?

17 THE DEFENDANT: I'm not sure of the date, but, yeah, we  
18 went over them. Yes.

19 THE COURT: About a week ago?

20 THE DEFENDANT: Yeah. Yeah.

21 THE COURT: Okay. At the time you went over those  
22 documents, did you have her explain all of the questions to you  
23 in the petition?

24 THE DEFENDANT: Yes. Yes, she did explain those to me.  
25 Yes.

1 THE COURT: Did you answer those questions truthfully?

2 THE DEFENDANT: Yes, I did.

3 THE COURT: Did she document your answers correctly?

4 THE DEFENDANT: Yes.

5 THE COURT: And then, after going through it, did you  
6 allow her to sign on your behalf and then, today, personally  
7 sign it as well?

8 THE DEFENDANT: Yes, I did both of those things. Yes.

9 THE COURT: All right. Going to the plea agreement,  
10 did she explain all of the terms of the plea agreement to you?

11 THE DEFENDANT: Yes, she did.

12 THE COURT: Were there any questions about the meaning  
13 of the plea agreement that she was unable to answer?

14 THE DEFENDANT: No. She answered all my questions.

15 THE COURT: And after going through the plea agreement,  
16 did she have -- place a typed signature on it and then have you  
17 personally sign it today?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. When you went over these  
20 documents about a week ago, were you under the influence of  
21 drugs or alcohol or having any difficulty thinking?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Are you under the influence of anything  
24 right now?

25 THE DEFENDANT: I am not, no.

1           THE COURT: Are you having any difficulty hearing,  
2 understanding, or answering my questions?

3           THE DEFENDANT: No.

4           THE COURT: Do you understand that if the Court accepts  
5 your plea of guilty, you will be found guilty of a felony?

6           THE DEFENDANT: Yes.

7           THE COURT: Do you understand you have the right to  
8 plead not guilty and make the Government try to prove this case  
9 at trial?

10          THE DEFENDANT: Yes, I do.

11          THE COURT: Do you understand you are giving up your  
12 trial rights by pleading guilty?

13          THE DEFENDANT: Yes.

14          THE COURT: You've been represented in this case by Ms.  
15 Milburn. Is that correct?

16          THE DEFENDANT: That is correct.

17          THE COURT: Do you believe that she has investigated  
18 this case sufficiently so that you know what to do today?

19          THE DEFENDANT: Yes.

20          THE COURT: Are you satisfied with her representation?

21          THE DEFENDANT: Yes, I am.

22          THE COURT: Has anybody threatened you in any way to  
23 get you to plead guilty?

24          THE DEFENDANT: No.

25          THE COURT: Has anybody promised you anything other

1     than the promise within the plea agreement to get you to plead  
2     guilty?

3             THE DEFENDANT:   No, ma'am.

4             THE COURT:   Do you understand that if you chose to go  
5     to trial, you would have the right to counsel representation at  
6     the trial at no cost to you?

7             THE DEFENDANT:   Yes.

8             THE COURT:   Ms. Milburn, in other words, would continue  
9     to represent you and she would never send you a bill for that  
10    help.

11            Do you understand that?

12            THE DEFENDANT:   Yes.

13            THE COURT:   Do you understand that if you chose to go  
14    to trial, you would have a jury trial?

15            THE DEFENDANT:   Yes.

16            THE COURT:   Do you understand that, at that trial, you  
17    would have the right to see and hear any witnesses who testify  
18    against you and to have them cross-examined on your behalf?

19            THE DEFENDANT:   Yes.

20            THE COURT:   Do you understand you would have the right  
21    to call witnesses for you?  And if they would not come  
22    voluntarily, you could get a court order called a subpoena to  
23    make them come and testify?

24            THE DEFENDANT:   Yes.

25            THE COURT:   Do you understand that if you chose to go

1 to trial, you could testify yourself if you wanted to or you  
2 could stay silent?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: Do you understand that if you stayed silent  
5 at the trial, the jury would not be allowed to consider that  
6 silence in deciding whether you are guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand that if you chose to  
9 go to trial, the Government would not get a conviction against  
10 you unless it was able to prove, to every single juror, that you  
11 are guilty beyond a reasonable doubt?

12 THE DEFENDANT: Yes, I understand.

13 THE COURT: Are you willing to give up all of those  
14 trial rights and plead guilty in this case instead?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: With a guilty plea, you will have a felony  
17 record, and with that felony record comes a loss of civil  
18 rights. Those rights include the right to vote, the right to  
19 serve in a jury, the right to hold a public office, the right to  
20 carry a weapon. You can also lose federal benefits, but you  
21 will lose rights.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: And knowing that you will lose civil  
25 rights, are you willing to plead guilty?



1 THE DEFENDANT: Yes, I am.

2 THE COURT: You're looking at a statutory sentence in  
3 this case of a minimum of 15 and up to 30 years in prison; a  
4 possible fine of up to \$250,000 could be imposed in addition to  
5 any term of imprisonment; supervised release of at least five  
6 years and up to a lifetime; a \$100 mandatory special assessment;  
7 and an assessment for restitution.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. You have what is called an  
11 11(c)(1)(C) plea agreement. Under the terms of that plea  
12 agreement, as I understand it -- let me get to that page --  
13 you're agreeing that your term of imprisonment should be a  
14 minimum of 210 months in prison and a maximum sentence of up to  
15 360 months in prison, with ten years of supervised release to  
16 follow any period of incarceration.

17 Is that your understanding of what you agreed to?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. How this is going to work -- I  
20 want to make sure you understand that what Judge Gerrard is  
21 going to do is he's going to decide whether he agrees with those  
22 terms, as far as the sentence.

23 What he's going to consider first is the sentencing  
24 guidelines. Have you talked about those with Ms. Milburn?

25 THE DEFENDANT: Yes, we talked about things.

1           THE COURT: All right. In addition to the sentencing  
2 guidelines, he's going to consider all of the relevant  
3 information that he finds in this case. That could include  
4 things such as any criminal history you may have, the number of  
5 images that were involved in this case, the age of the children  
6 reflected in those images, those types of things.

7           Do you understand that?

8           THE DEFENDANT: Yes.

9           THE COURT: And once Judge Gerrard considers all of  
10 your relevant conduct and makes his findings, do you understand  
11 that he can choose to sentence you between 210 and 360 months or  
12 he could decide that that isn't the right sentencing range?

13          Do you understand?

14          THE DEFENDANT: Yes.

15          THE COURT: Now, if he decides that that is not the  
16 correct range for your sentence, you'll be allowed to withdraw  
17 your plea of guilty and you can either negotiate another  
18 agreement with the Government or go to trial.

19          Do you understand?

20          THE DEFENDANT: Yes, I do.

21          THE COURT: But if he chooses or says that 210 to 360  
22 months, in that range, is the correct sentence and he sentences  
23 you in that range, do you understand you will be required to  
24 serve all of that sentence and the most you can get off with it  
25 is 54 days per year for good time served and that's only if you

1     earn good time?

2             Do you understand?

3             THE DEFENDANT:  Yes, Your Honor, I do.

4             THE COURT:  Now, after you serve your time in prison,  
5     you will be placed on what is called supervised release for at  
6     least 10 years.  I want to make sure you understand what that  
7     means.

8             When you're on supervised release, you're following  
9     rules -- or required to follow rules that are set out in your  
10    sentencing order.  Those rules will be placed in the sentencing  
11    order at the time of sentencing.

12            Do you understand that?

13            THE DEFENDANT:  Yes, I do.

14            THE COURT:  What the supervised release would mean in  
15    this case is for ten years after you get out of prison, you have  
16    to follow those rules, and probation officers from the federal  
17    court will be monitoring your conduct and make sure that you do.

18            Do you understand that?

19            THE DEFENDANT:  Yes, ma'am.

20            THE COURT:  Do you understand that if you violate those  
21    rules, you can be brought back to court and sent back to jail?

22            THE DEFENDANT:  Yes.

23            THE COURT:  And do you understand that if you violate  
24    those rules, by committing another crime, your penalty or  
25    sentence on the new crime could be greater than it otherwise

1 would have been merely because you were already serving a  
2 sentence in this case when you committed another crime.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: You will be required to pay a \$100  
6 mandatory special assessment.

7 Were you aware of that?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Is this the \$5,000 version, Mr.  
10 Russell?

11 MR. RUSSELL: No, it's not, Your Honor. This case  
12 qualifies for a \$50,000 special assessment.

13 THE COURT: Okay. And in addition to that,  
14 restitution; is that correct?

15 MR. RUSSELL: Yes, Your Honor.

16 THE COURT: Okay. So let me explain what we're talking  
17 about here, sir.

18 At the time of sentencing, Judge Gerrard will listen to  
19 any evidence that is offered regarding the harm that you caused  
20 to other people by your criminal conduct.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: When you're -- when you cause harm to other  
24 people through criminal conduct, you can be required to pay for  
25 that, and that is called restitution.

1 Do you understand?

2 THE DEFENDANT: Yes.

3 THE COURT: So once Judge Gerrard listens to any  
4 evidence that is presented on that, he can include, in your  
5 sentence, an amount that you have to pay for the harm you  
6 caused.

7 Do you understand?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: In addition to that, there is such a thing  
10 as a special assessment, which, in this case, is \$50,000 because  
11 of the gravity of the crime. I want to make sure you understand  
12 what that is.

13 It is for -- it is placed into a fund that is used to  
14 pay victims of this type of crime, whether they can be  
15 specifically tracked to you or not.

16 Do you understand that?

17 THE DEFENDANT: I think so. That -- is that something  
18 that I pay? Is that what that means?

19 THE COURT: Yes. It can be imposed upon you, the  
20 \$50,000 special assessment, as part of your sentence in this  
21 case.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, if you cannot afford to pay it, that  
25 is a criteria that you would discuss and that your attorney

1 would advocate on your behalf to Judge Gerrard at the time of  
2 sentencing.

3 Do you understand?

4 THE DEFENDANT: Yes, ma'am, I do.

5 THE COURT: But what my job is, for you here today, is  
6 to make sure you know the worst possible scenario, and it could  
7 be up to \$50,000.

8 Do you understand?

9 THE DEFENDANT: Okay. Yes, I understand.

10 THE COURT: All right. You have a plea agreement with  
11 the Government which outlines your agreement regarding what  
12 should happen at the time of sentencing.

13 Do you understand that agreement is between you and the  
14 Government and it is not binding on Judge Gerrard?

15 THE DEFENDANT: Yes.

16 THE COURT: At this time, I'm going to have Mr. Russell  
17 explain that plea agreement to you. Please listen as he does  
18 that.

19 Mr. Russell.

20 MR. RUSSELL: Your Honor, the plea agreement in this  
21 matter is that the Defendant would plead guilty to Count I of  
22 the indictment. In exchange, the United States would move to  
23 dismiss Counts II, III, and IV at the time of sentencing.

24 The elements of the offense, a factual basis, and the  
25 penalties are set forth in the plea agreement, in addition to

1 the fact that the agreement is limited to the United States  
2 Attorney's Office for the District of Nebraska and cannot bind  
3 any other federal, state, or local prosecuting administrative or  
4 regulatory authority.

5 As the Court's already advised the Defendant, it is an  
6 11 -- this is an 11(c)(1)(C) plea agreement, calling for a term  
7 of imprisonment, to be ordered by the court, of at least 210  
8 months and a maximum of 360 months, somewhere in that range.

9 The parties agree that the Defendant would also receive  
10 a ten-year term of supervised release after any period of  
11 incarceration, but the exact terms of imprisonment, including  
12 restitution and other terms of supervised release, are left to  
13 the discretion of the court.

14 As the Court has already indicated, the Defendant would  
15 be required to make restitution, if shown and ordered by the  
16 district court.

17 There is a waiver of appeal and collateral attack  
18 provision in the plea agreement, which limits the Defendant's  
19 ability in those two areas.

20 The Defendant further agrees to waive his right to  
21 withdraw his plea of guilty, pursuant to Rule 11(d) of the  
22 Federal Rules of Criminal Procedure, and that says the Defendant  
23 can only withdraw his plea of guilty in the event the court  
24 rejects the plea agreement, as we've already discussed.

25 Your Honor, I believe those are the main terms of the

1 plea agreement.

2 THE COURT: Ms. Milburn, do you agree?

3 MS. MILBURN: I do agree.

4 THE COURT: Okay. Mr. Fischer, did you listen as the  
5 Government described the plea agreement?

6 THE DEFENDANT: Yes, Your Honor, I did.

7 THE COURT: Did Mr. Russell's description match your  
8 understanding of your agreement with the Government?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. There's a couple of things I  
11 need to make sure you understand. You have what is called a  
12 waiver of appeal and a waiver of collateral attack.

13 Everything that's done by this court is subject to  
14 being looked at by another court to make sure it was done right.  
15 The process is called an appeal, and the court that looks at it  
16 is the Eighth Circuit Court of Appeals.

17 Do you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that under the terms of  
20 this plea agreement, you're giving up your right to that appeal  
21 process unless you are claiming that Ms. Milburn provided you  
22 with ineffective assistance of counsel?

23 THE DEFENDANT: Yes.

24 THE COURT: Collateral attack is different than an  
25 appeal. With a collateral attack, you can challenge your



1 conviction and your sentence by claiming your constitutional  
2 rights were violated.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that under the terms of  
6 this plea agreement, you're giving up your right to that type of  
7 proceeding as well unless you are claiming that Ms. Milburn  
8 provided you with ineffective assistance or you are claiming  
9 that what you're admitting to here today is not a crime.

10 Do you understand that?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: Do you understand that your waiver of  
13 appeal and your waiver of collateral attack apply both to your  
14 conviction and to the sentence you've not yet received?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you talked to Ms. Milburn about your  
17 appeal rights and your collateral attack rights?

18 THE DEFENDANT: Yes, we did talk about that.

19 THE COURT: After having those discussions and  
20 considering your options, have you decided to give up your right  
21 to appeal and to collateral attack with the exceptions listed in  
22 the plea agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: Has anybody made any promises to you that  
25 are not in this plea agreement?

1 THE DEFENDANT: No.

2 THE COURT: Do you understand that whether you plead  
3 guilty or whether you're found guilty at trial you could get the  
4 same sentence?

5 THE DEFENDANT: Yes.

6 THE COURT: In other words, do you understand there is  
7 no guarantee your sentence will be less because you plead guilty  
8 instead of being found guilty by a jury?

9 THE DEFENDANT: Yes.

10 THE COURT: At this time, I'm going to have the  
11 Government explain the factual basis -- the key points of the  
12 factual basis. I will point out that the plea agreement does  
13 have some facts within it.

14 Just one moment.

15 All right. I'm sorry about that.

16 All right.

17 All right. At this time, then, I will have the  
18 Government explain the key facts the Government will present at  
19 trial if this case went to trial.

20 Please listen as Mr. Russell does that.

21 Mr. Russell.

22 MR. RUSSELL: Your Honor, as the Court has already  
23 indicated, the factual basis is set forth in the plea agreement.

24 The main facts are, between May 1st and May 4th, the  
25 Defendant communicated with a 13-year-old minor, who's been

1 identified as Victim 1. During the course of those  
2 communications, which were on various Internet media --  
3 Internet-based social media platforms, the Defendant and the --  
4 Victim 1 began to engage in sexual communication, sexual -- I  
5 guess, sexual topics that led to a meeting between the Defendant  
6 and Victim 1 on May 4th, 2019, for the purpose of engaging in  
7 sexual conduct that occurred.

8 The Defendant and Victim 1 met at a school in Lincoln,  
9 Nebraska. Victim 1 and the Defendant then went to a residence  
10 in Lincoln, Nebraska, where the Defendant and Victim 1 engaged  
11 in sexually explicit conduct, as defined by federal law. The  
12 Defendant filmed Victim 1 performing the sexually explicit  
13 conduct using an Apple iPhone SE, which is a cellular phone  
14 manufactured, mailed, transported, and shipped outside of the  
15 state of Nebraska, in coming from -- coming in through foreign  
16 commerce. And then, later, the Defendant distributed the video  
17 of the sexual act to Victim 1 on May 5th, of 2019.

18 That's what the evidence would show, Your Honor.

19 THE COURT: Ms. Milburn, do you agree?

20 MS. MILBURN: I do agree, Your Honor.

21 THE COURT: All right. Mr. Fischer, did you listen as  
22 the Government described the evidence against you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Is everything that Mr. Russell said the  
25 truth?

1 THE DEFENDANT: Yes.

2 THE COURT: On May 4th, of 2019, were you here in  
3 Nebraska?

4 THE DEFENDANT: Yes.

5 THE COURT: While in Nebraska, did you have contact  
6 with a person of the age of 13?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you entice that person in any way to  
9 engage in sexually explicit conduct?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you do so for the purpose of taking  
12 photographs and pictures and visual depictions of this person of  
13 the age of 13 engaging in sexual explicit conduct?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Did you know, at the time that  
16 you did that, that those visual depictions would be transported  
17 across state lines?

18 THE DEFENDANT: Did I know that they would be  
19 transported?

20 THE COURT: Did you have reason to know?

21 THE DEFENDANT: No. I'm not sure I understand the  
22 question, but --

23 THE COURT: All right. Mr. Russell --

24 MR. RUSSELL: Your Honor --

25 THE COURT: -- can you help me out a bit?

1           MR. RUSSELL: Yeah. The -- there's two things related  
2 to the -- to the indictment. One is that he used materials in  
3 producing the child pornography, which had been manufactured,  
4 mailed, transported, or shipped across state lines or in foreign  
5 commerce.

6           Mr. Fischer used an iPhone SE in order to film the  
7 minor engaging in sexually explicit conduct. The Apple iPhone  
8 SE was manufactured, mailed, and transported through interstate  
9 and foreign commerce. Then, at a later time, he -- he texted  
10 the video to Victim 1.

11           But I think, where he is -- where Mr. Fischer may be  
12 getting hung up is, in essence, the -- the video relates -- or  
13 the video was produced using materials that had been  
14 manufactured outside of the state of Nebraska.

15           THE COURT: Okay. All right.

16           Sir, do you understand what Mr. Russell just said?

17           THE DEFENDANT: Yes, I understand.

18           THE COURT: Did you use an Apple SE iPhone to create  
19 the visual depictions of the child?

20           THE DEFENDANT: Yes.

21           THE COURT: Engaging in sexual explicit conduct?

22           THE DEFENDANT: Yes.

23           THE COURT: Do you agree that the Apple SE cell phone  
24 was not manufactured in the state of Nebraska and had to come  
25 across state lines to get into your hands?

1 THE DEFENDANT: Yes.

2 THE COURT: And did you also use that same iPhone,  
3 then, to text those pictures to the 13-year-old victim?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Any additional questions, Mr.  
6 Russell?

7 MR. RUSSELL: No, Your Honor. Thank you.

8 THE COURT: Ms. Milburn?

9 MS. MILBURN: No, Your Honor. Thank you.

10 THE COURT: Mr. Russell, do you believe the guilty plea  
11 is knowing, intelligent, and voluntary and that there is a  
12 factual basis for it?

13 MR. RUSSELL: I do, Your Honor.

14 THE COURT: Ms. Milburn, do you agree?

15 MS. MILBURN: I agree, Your Honor.

16 THE COURT: All right. Mr. Fischer, do you want this  
17 court to accept your plea of guilty?

18 THE DEFENDANT: Yes, Your Honor, I do.

19 THE COURT: Do you have any questions of me before I  
20 proceed?

21 THE DEFENDANT: No, I don't. No.

22 THE COURT: All right. To Count I of the indictment,  
23 which alleges that, on or about May 4th, of 2019, while in the  
24 District of Nebraska, you did persuade, induce, and entice and  
25 coerce a minor to engage in sexually explicit for the purpose of

1 producing visual depictions of that conduct, knowing that the  
2 materials would -- that you were using to do that were  
3 transported into the state of Nebraska through interstate  
4 commerce and, thereafter, texting those photos using that same  
5 phone, what do you plead?

6 THE DEFENDANT: I plead guilty.

7 THE COURT: I do find that your guilty plea is knowing,  
8 intelligent, and voluntary and that there is a factual basis for  
9 it. I will recommend to Judge Gerrard that he accept your plea  
10 of guilty and your plea agreement. He'll take up both the  
11 issues of your guilty plea and plea agreement at the time of  
12 sentencing.

13 We're looking at a sentencing date of July 17th at  
14 9:30. Does that work for everyone?

15 MR. RUSSELL: It does for the Government, Your Honor.

16 MS. MILBURN: Let me double check, Your Honor.

17 THE COURT: Uh-huh, no problem.

18 MS. MILBURN: That will be fine, Judge. Thank you.

19 THE COURT: All right. Anything else that we need to  
20 take up on this case?

21 MR. RUSSELL: No, Your Honor.

22 MS. MILBURN: No, Your Honor. Thank you.

23 THE COURT: We are in recess.

24 THE DEFENDANT: Thank you.

25 (Proceeding concluded at 2:54 p.m.)

C E R T I F I C A T E

I, KELLY CUSTARD, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

S/Kelly Custard  
Kelly Custard

5/17/20  
Date